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June 26, 1997

VIA FEDERAL EXPRESS

Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: CC Docket No. 97-98

Dear Secretary:

Enclosed for filing on behalf of Union Electric Company in the above matter are an original and eleven (11) copies of the Comments of Union Electric Company.

Kindly acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed envelope.

Sincerely,

A handwritten signature in dark ink, appearing to read "WJN", written over a horizontal line.

William J. Niehoff  
Attorney

WJN/meh  
Enclosure(s)

cc: Michael T. McMenamin (diskette enclosed)  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC M. L. Docket

In re Matter of

Amendment of Rules and Policies  
Governing Pole Attachments

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CC Docket No. 97-98

To: The Commission

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**COMMENTS OF UNION ELECTRIC COMPANY**

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Dated: June 26, 1997

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### EXECUTIVE SUMMARY

The Commission in this Notice of Proposed Rulemaking states that a re-evaluation of the formula for the maximum just and reasonable rates that utilities may charge for attachments made to electric poles may be necessary to improve accuracy in the continued application of the rule to cable television systems and to telecommunications carriers under the 1996 Act. NPRM, par. 1. The Commission also proposes in the NPRM a conduit methodology to determine the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for use of their conduit systems. Id.

Union Electric Company ("UE") is an electric utility with operations in Missouri and Illinois and which has a service territory that exceeds 24,000 square miles. UE owns many thousands poles and controls numerous ducts, conduits, and rights-of-way which are part of its core infrastructure necessary for it to provide electric service to over one million retail customers.

UE strongly believes that the historical rate formula proposed for conduit should not be used. Conduit used for electric service is an important resource which, in urban areas where access is most likely to be requested, is mostly depreciated and for which replacement or expansion is extremely expensive. For example, UE is making use of conduit first installed for the 1904 World's Fair. Use of a historical rate formula would be confiscatory and, by severely undervaluing the true cost of access, lead to the inefficient use of a scarce and valuable resource. UE believes that traditional ratemaking is inappropriate for conduit.

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Instead, as contemplated under Section 224 (e), any system for pricing of conduit should be based upon market rates negotiated by the parties.

In the event that the Commission declines to adopt market based rates, the rate for conduit should be based on forward-looking replacement cost instead of historical cost. Other adjustments must be made to the rate formula proposed by the Commission. The one-half duct presumption is inappropriate because, due to size differences and for safety considerations, electric supply cable and communication cable cannot share the same duct. Use of an average net linear basis to calculate the rate is inappropriate because of the wide variation in cost from urban to suburban areas. In urban areas, where conduit access is most likely to be sought, replacement costs may exceed \$250 a foot. For these reasons, if a formula is to be used, it must be forward looking and based on replacement costs at the site requested for access.

The Commission has also proposed a formulaic historic cost recovery methodology to determine the maximum allowable rate for pole attachments under Section 224 (d). UE believes that this approach is inappropriate and inaccurate. The Commission should allow market-based rates for pole attachments, or at a minimum, adopt a rate methodology that uses forward-looking costs or replacement cost estimates.

In the context of disfavoring the rate formula proposed in the NPRM, UE believes that numerous adjustments are necessary to avoid imposing an unjust and confiscatory rate. UE favors the use of rebuttable presumptions for pole height and usable space. However,

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the 40-inch safety space required by the National Electric Safety Code between electrical supply conductors and communication cables should not be treated as electric utility usable space because its function is to protect communications workers and the space is not usable for attaching electric supply cables.

Several other factors must be addressed in the context of discussing the proposed pole rate formula. Poles of 30 feet or less must be excluded both from the pole investment costs in the numerator and the number of poles in the denominator because such poles generally lack sufficient space to accommodate multiple attachments. UE further believes that the Commission should use gross book costs for calculating pole attachment rates in order to avoid the potential problem of unrealistically low or negative net asset balances and to simplify the rate computation.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Matter of	)	
	)	
Amendment of Rules and Policies	)	CC Docket No. 97-98
Governing Pole Attachments	)	
	)	

**COMMENTS OF UNION ELECTRIC COMPANY**

Union Electric Company, ("UE"), by its attorneys and pursuant to Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553 (1994) and the Commission's Notice of Proposed Rulemaking (the "NPRM") in the above-captioned docket released March 14, 1997, hereby submits its Comments.

The NPRM seeks comment on proposed changes to the Commission's rules relating to the maximum just and reasonable rates utilities may charge for attachments made to a pole, duct, conduit or right of way under Section 224(d) of the Communications Act of 1934 (the "1934 Act") as amended by the Telecommunications Act of 1996 (the "1996 Act") (referred to together as "the Act"). Pursuant to Section 224(d)(3), the Commission's proposed rate formulations would apply to telecommunication carriers, as well as to cable companies, pending the promulgation of the new rate formula for telecommunications carriers required under Section 224(e) of the Act. Union Electric Company's comments are directed towards the proposed rate formulations as they would apply to electric utilities that own poles, conduits and right-of-ways.

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## **I. INTRODUCTION**

Union Electric Company is an electric utility engaged in the production, transmission, distribution, and sale of electric energy. Its service territory is approximately 24,000 square miles in Missouri and Illinois. In addition to serving more than 1 million retail customers, the company sells electricity at wholesale to other utilities. Union Electric Company owns many thousands of distribution poles and controls numerous ducts, conduits, and rights-of-way, all of which are part of its core infrastructure by which it provides electric service. UE accordingly has a vital interest in the outcome of this proceeding.

In the NPRM, the Commission states that a re-evaluation of the formula for the maximum just and reasonable rates that utilities may charge for attachments made to electric poles "may be necessary to improve accuracy in the continued application" of the rule to cable television systems and to telecommunications carriers under the 1996 Act. NPRM ¶ 1. The Commission also proposes in the NPRM a conduit methodology to determine "the maximum just and reasonable rates utilities may charge cable systems and telecommunication carriers for use of their conduit systems." *Id.* The proposed rule is the Commission's initial attempt to develop a rate methodology for electric conduit.<sup>1/</sup>

Union Electric Company addresses first in Part II of these comments the

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<sup>1/</sup> The Commission has a rate formulation for telephone conduit. However, as the Commission has recognized in the NPRM, there are significant differences between electric conduit and telephone conduit. See NPRM ¶ 43. Those differences are discussed in Part II infra.

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Commission's proposed conduit methodology because of its serious concerns with the Commission's proposed methodology for electric conduit. Foremost is the fact that the Commission has proposed a traditional recovery of historical costs rate methodology for conduits. Such a methodology is not appropriate for conduits because electric conduit costs, such as those of UE, are often mostly depreciated and the replacement or expansion for electric conduit systems is highly expensive. Therefore, rates based on recovery of historic costs will not come close to reflecting the true market value or replacement costs of UE's electric conduit system. Part III of these Comments highlights considerations that UE believes are important for the Commission to consider in its re-evaluation of its current rate formula for attachments to electric poles.

As a general matter, UE believes that this proposed rulemaking, although proceeding under Section 224(d), should be undertaken in view of the rulemaking that the Commission will shortly undertake for rates to be charged telecommunication carriers under Section 224(e). To the extent Commission is able to develop rules in this rulemaking in accordance with the principles and mandate of Section 224(e), it will minimize the transition for telecommunication carriers from one rate structure to another. This objective is particularly desirable for electric conduit because the Commission currently does not have any existing rate formulation for electric conduit. To the extent feasible, therefore, the Commission should develop a rate formulation for conduits that would be in accordance with the principles and mandate of Section 224(e).

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Two fundamental principles are set out in Section 224(e). First, Section 224(e) requires the Commission to develop regulations to govern attachment charges for telecommunications carriers "when the parties fail to resolve a dispute over such charges." 47 U.S.C. § 224(e)(1). This language reflects Congress' intent that voluntarily negotiated rates should be the fundamental means of setting pole attachment rates for telecommunication carriers. Congress recognized the important role of an open and competitive market in Section 224(e) and thus provided that a government-imposed rate should come into play only as a fall-back. Therefore, Commission regulations under Section 224(e)(1) would need to be structured to allow "good faith" negotiations aimed at reaching a pro-competitive agreement to be the prevailing means of determining a rate for access by telecommunications carriers to the infrastructure owned by utilities. Prescriptive artificial, regulated rates should be avoided in keeping with this Congressional intent. In this regard, Section 224(e)(1) does not mandate the application of a historic cost recovery or any other particular rate methodology. It simply provides that rates be "just, reasonable, and nondiscriminatory."

Second, Section 224(e) recognizes that other entities attaching or utilizing electric poles or conduits should pay for part of the costs of the unusable space of the pole or the conduit. Section 224(e)(2) provides that two-thirds of the costs of "other than the usable space" of a "pole, duct, conduit, or right-of-way" is to be apportioned equally "among all attaching entities." This provision simply recognizes the obvious fact that attaching entities

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benefit, for example, from the entire pole -- the part of the pole buried in the ground and the height of the pole necessary to be achieve minimum ground clearance -- and not just the several feet of pole occupied by their attachments.

## **II. PROPOSED ELECTRIC CONDUIT RATE METHODOLOGY**

The Commission proposes to follow the same rate-making approach for electric conduit that it uses for pole attachments. NPRM ¶¶ 38-42. The particular adaptation of that approach proposed by the Commission is a formula initially developed for telephone conduit. NPRM ¶¶ 44-45. The Commission recognizes, however, that it has limited experience in resolving disputes relating to electric conduit and that there are "inherent differences in the safety aspects" of cable owned or used by cable operators and telecommunications carriers and conduit owned or used by electric utilities. NPRM ¶ 43. The Commission is also cognizant that its proposed rate formula "does not appear to take such differences into consideration," and it seeks comment on the "physical limitations" of electric conduit systems that would affect the rate for such facilities. Id.

The Commission is correct to recognize that the inherent characteristics of electric conduit may require the use of different rate setting principles. The characteristics of electric conduit differ from both telephone conduit and electric poles such that an entirely different rate setting methodology should be used for electric conduit. Section II.A below sets forth some of those characteristics as well as particular considerations that UE believes

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are important for the Commission to take into account in establishing a rate methodology for electric conduit. Section II.B provides UE's comments on what it believes is an appropriate rate methodology for electric conduit. Section II.C sets forth specific comments concerning the Commission's proposed methodology, assuming the Commission were nonetheless to proceed with it.

**A. Major Considerations for Establishing An Electric Conduit Rate Methodology**

UE believes that the characteristics of electric conduit differ from both telephone conduit and from electric pole attachments such that an entirely different rate setting approach should be used. These characteristics as well as other major factors that should influence any rate methodology adopted by the Commission for electric conduit include the following:

First, electric conduit is an unique resource that cannot be readily duplicated. Conduit is used by electric utilities mostly in urban areas where poles cannot be used or where cable cannot be buried directly in the ground. A conduit system consists of a group of or a bank of conduit ducts, manholes, charge, and/or vaults.<sup>2/</sup> The construction of such a system is an immense undertaking, particularly in a crowded urban area. It consists of

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<sup>2/</sup>The National Electric Safety Code defines a "duct" to be "a single enclosed raceway for conductors or cable." Section 320 at p. 176 (1997 Edition). In turn, the Code defines a "conduit" to be "a structure containing one or more ducts" and a "conduit system" to be "the combination of . . . conduits, manholes, charge, and/or vaults joined to form an integrated whole." Id.

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excavating vaults, digging trenches between vaults, placement of conduit duct, and pouring concrete around the duct bank. Because of its large impact, new conduit installation is often closely controlled and policed by local ordinances and permits. In the downtown area of St. Louis, there are numerous obstructions, e.g. gas, water, sewer, steam and refrigeration, that need to be worked around, thus adding considerably to the installation effort. In addition, due to the dense traffic, there are many instances where the city government will mandate that we cross major streets and thoroughfares one lane at a time, which adds a tremendous overhead to an otherwise typical installation.

Second, many existing electric conduit systems were constructed years ago and are mostly depreciated. Therefore, a huge disparity often exists between the book value of the conduit and its replacement value. In fact, the book value for some conduit systems built decades ago is negative. UE is currently making use of conduit systems that were installed for or around the time of the 1904 World's Fair. Moreover, today's cost to construct even a modest conduit system in an urban area is a major undertaking and expense. UE, depending on how many ducts are being installed and how the associated manholes are spaced, will spend anywhere from \$125 - 250 per linear foot installing its conduit systems. Therefore, a rate based on the historical cost of existing conduit systems would be confiscatory and could greatly disadvantage electric utility companies in providing electrical service. A utility could be forced to sell conduit access at prices far below market value and far below the cost at which it may later be required to build new conduit necessary to

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perform its core business function of providing electrical service.

Third, there can be huge differences in the cost of electric conduit systems depending on their location. Conduit systems in heavily urbanized areas are vastly more costly to construct than in suburban areas. Therefore, it would be inappropriate to base conduit rates on average system costs (whether historic or replacement costs are used as the basis for rate recovery). In the City, where Union Electric is forced to reside within Right-of-Way, often below paved street grade, with up to 12 conduits encased in concrete with traffic-rated manholes located every 200 feet or so, it can spend up to \$250 per linear foot. On the other hand, merely trenching in a single direct-buried conduit or a pair of conduits through an easement with no paved surface above the route can be done for less than \$30 per foot. And, depending on where the installation is, UE can have single conduits bored in for less than that. The need to develop rates based on particular locales is necessary given that access will inevitably be sought in high-cost urbanized areas.<sup>3/</sup>

Fourth, the empty ducts that do exist in electric conduit systems are designed as part of the system to serve two purposes. Foremost, empty ducts are necessary to allow rapid restoration of power in the event of a failure of a cable in one of the conduit ducts. Rather than pull out the failed cable, which may not be possible, the electric company can more

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<sup>3/</sup>Further, as discussed in Section II.C infra, UE's records do not permit it to calculate easily an average cost per conduit foot or meter for its system, as would be required under the Commission's proposed methodology.

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quickly pull a new cable through an empty duct in order to restore electric service as rapidly as possible. In fact, it's estimated that 20-25% of the 1,100,000 feet of dead cable Union Electric has in the ground is there because it's stuck and can't be removed. Thus, although a conduit system may contain empty duct, a certain amount of those ducts must be maintained as reserves in order to provide the reliable supply of electrical energy required by our modern-day society.

Further, certain capacity is usually designed into conduit systems to allow for future expansion of electric service. Because of the large costs of new conduit systems, and the potential difficulty of obtaining the necessary permits for new construction, such capacity is a unique, valuable commodity, essential for UE to provide electrical service to expanding communities and cannot validly be priced on a historic cost basis.

Fifth, there are distinct physical differences between electric and communication cables that directly affect any proposed rate methodology. Foremost, electric and communications cables cannot share the same conduit duct. Electric cable pulled through a duct is ordinarily on the order of several inches in diameter and weighs up to 20 pounds per foot. In contrast communications cables are on the order of 1/2 of an inch in diameter and weigh ounces per foot. Pulling electric cable through a duct (necessitated by the cable failure) would destroy the smaller communications cable. In this regard, the National Electric Safety Code ("NESC") precludes electrical supply cable and communications cable from sharing "the same duct unless the cables are maintained or operated by the same

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utility." NESC Rule 341(A)(6).<sup>4/</sup>

Sixth, the NESC recognizes the distinct physical differences between electric supply and communications cables and provides that electric supply and communications cable can be installed in the same manhole or vault "only with the concurrence of all parties concerned." NESC § 341(B)(2)(b)(1) (emphasis added). Further, in those instances where the parties do agree to locate both electric supply and communications cable in the same manhole or vault, the code provides specific separation requirements as follows:

- (2) Supply and communication cables should be racked from separate walls. Crossings should be avoided.
- (3) Where supply and communication cables must be racked from the same wall, the supply cables should be racked below the communication cables.
- (4) Supply and communications facilities shall be installed to permit access to either without moving the other.
- (5) Clearances [between electric and communications cables and equipment] shall be not less than those specified in Table 341-1, [which requires clearances from 6 to 24 inches depending on the voltage of the electrical cable and equipment].<sup>5/</sup>

NESC § 341(B)(2)(b).

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<sup>4/</sup>Also, failure of electrical cables could result in "arcing" that could damage nearby communication cables. That is one reason for the separation requirements in the NESC code discussed under the next point in the text.

<sup>5/</sup>Table 341-1 provides that "[t]hese clearances may be reduced by mutual agreement between the parties concerned when suitable barriers or guards are installed." (Emphasis added).

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Seventh, the above Code requirements for concurrence of the parties for locating communication and electric supply cables in common vaults or manholes and for their separation in such circumstances emanate from the highly dangerous environment that exists in electric conduit vaults and manholes. Such vaults and manholes are crowded, confined quarters containing extensive electric equipment and circuits -- much of it high voltage -- which can pose grave potential dangers to untrained communication workers. Not only are important safety considerations involved, but the presence of non-utility personnel in electric vaults and manholes -- even if properly trained -- require special procedures and precautions that translate directly into additional costs borne by the utility.

Eighth, because of the significant differences between electric and communication cable and conduit, including the dangers of working in closely confined electric manholes and vaults, the general practice of electric utilities and telephone companies is not to develop and share joint conduit duct banks. UE has no joint ownership agreements, though the city of St. Louis has always had usage rights when it came to installing traffic lighting cable in our conduits downtown. For example, although UE has developed a joint pole agreement with Southwestern Bell Telephone Company to make joint use of each other's pole system, we do not generally share conduit duct banks. Thus, each Company has developed its own separate conduit systems.

**B. Appropriate Rate Methodology for Electric Conduit**

UE believes that the traditional ratemaking approach of recovery of historical costs

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is inappropriate for developing the rates to be charged for access to electric conduit. There are numerous reasons, discussed above, why electric conduit does not fit within a historical cost recovery rate scheme as proposed by the Commission. Such a rate-based system would in fact be counterproductive because it could require a unique, valuable resource to be sold at prices far below any reasonable measure of its market value, societal value or replacement costs.

The Commission should therefore adopt a different rate-making approach for conduit than proposed in the NPRM. Such a system should place primary reliance on market-based rates negotiated by the parties, as will be mandated in rulemaking under Section 224(e).<sup>6/</sup> There are many considerations involved in providing access to electric conduit systems, cost being just one. These include particularly the safety considerations evidenced by the NESC provisions cited above. The parties should be free to negotiate an agreement that fully accounts for all these important considerations. The Commission should, therefore, not establish a comprehensive regime of rules prescribing electric conduit rates, but at most, adopt general rules setting forth broad parameters for determining just and reasonable rates for conduit access.

To the extent that the Commission would nevertheless seek to establish a particular

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<sup>6/</sup> As already observed in the introduction, the Commission should follow, to the extent possible, Section 224 (e) principles in order to minimize the transition from one rate system to another.

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rate methodology other than market-based rates, that methodology should be based on forward-looking costs or replacement costs. For newly constructed conduit systems, which a utility could plan and design for access by cable television and telecommunication companies, such an approach may roughly approximate an historical cost approach. For older, highly depreciated conduit systems, of limited additional capacity, it would ensure that a unique, valuable resource will not be utilized for uses nowhere close to its true economic value.

Further, because of the large variations in the costs of conduit systems for highly urbanized areas and other less crowded areas, the Commission should allow such rates to be determined on a local or project basis, such as for downtown urban areas, city residential areas, or suburban areas, as opposed to a system wide basis.

To the extent that the Commission believes that it may be bound by statute or precedent to adopt a historical cost-recovery rate methodology under Section 224(d), UE strongly urges the Commission to reconsider that position. The Commission is not required to promulgate regulations establishing rates to be charged for conduit under Section 224(d). See, e.g., Securities and Exchange Commission v. Chenery, 332 U.S. 194 (1947) ("Chenery II") (in the absence of a statutory mandate, the choice between rulemaking and adjudication lies solely in an agency's informed discretion). In Chenery II the Supreme Court held that absent a statutory mandate an agency may exercise its "informed discretion" to proceed by adjudication rather than by rulemaking where it "may not have had sufficient experience

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with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule." 332 U.S. at 203. The Commission, therefore, may and should choose in its informed discretion not to adopt rules fixing rates for access to conduit under Section 224(d), and instead may choose to proceed by adjudication.

Chenery II is particularly apropos as guidance in this instance. Although the Commission has regulated rates for pole attachments, as already discussed, that experience is not germane for electric conduit rates. The Commission cannot foresee the myriad of factual circumstances that it will face in establishing rates for electric conduit. In such uncertainty, and in the absence of a statutory mandate, Chenery II allows an agency to proceed by adjudication. Thus, to the extent that the Commission believes that it is bound under Section 224(d) to follow an historical cost approach in setting rates, it should not establish detailed regulations implementing such a rate methodology. It should instead proceed by adjudication to explore the myriad of issues that are involved in establishing conduit rates, and the implication of any particular rate setting methodology.<sup>2/</sup>

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<sup>2/</sup>Admittedly, the Commission, by next year, will need to promulgate regulations implementing Section 224(e), which does require the Commission to promulgate at least certain minimal regulations. Section 224(e), however, clearly does not require an historical cost approach. It simply requires the Commission to promulgate regulations to ensure that a utility charges "just, reasonable, and nondiscriminatory rates for pole attachments" without reference to any particular rate approach. As discussed above, the Commission should do no more than adopt regulations that define the broad parameters of just and reasonable rates.

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C. Comments on Commission's Proposed Historical Cost Rate Methodology

Although UE strongly believes that a historical cost rate methodology is not appropriate for the reasons discussed above, UE addresses in this section the Commission's specific request for comments concerning its proposed historical cost rate methodology.

1. Allocation of Usable Space

The Commission seeks comment on its proposal to use a half-duct methodology for calculating conduit rates. This methodology would establish a rebuttable presumption that a cable television or telecommunications cable occupies one half of a duct in order to simplify the rate calculation. NPRM ¶¶ 44-46.

The Commission's half-duct methodology emanates from rate cases involving telephone conduit. See NPRM ¶ 44. Two communication cables may share a single duct. However, as discussed in Section II.A above, an electric supply cable and communication cable cannot. Therefore, a half-duct methodology cannot be applied to electric conduit. When a cable television or telecommunication company uses an electric conduit duct for one of its communications cables, it must be responsible for the entire duct. The electric utility can no longer use the duct even assuming the separation requirements of the NESC discussed above could be met.

It is true that it may be possible to pull interduct through a duct and allow more than one communications cable in a single duct. The initial cable television or telecommunication company using the duct must, however, be responsible for the cost of

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installing any interduct, for the interduct does not benefit the utility. If additional communications cables are subsequently installed by other companies, the initial company could recoup a portion of the cost of installing the interduct and have its rates for use of the duct reduced at the same time. Such an approach is analogous to that prescribed by the Commission for additional pole attachments that require the installation of a new, higher utility pole. In that circumstance, the party making the additional attachment requiring the installation of a taller pole is initially responsible for the entire cost of installing the new pole, but it can recoup part of this cost from other parties who subsequently make additional attachments in effect benefiting from the increased height of the pole.<sup>8/</sup>

2. Net Linear Conduit Cost

The Commission's proposed rate methodology would require calculation of a utility's net cost or conduit per meter or other linear measurement. The Commission proposes that the FERC accounts to be used for computing a utility's conduit investment are Account 366 ("Underground conduit"), Account 367 ("Underground conductors and devices"), and Account 369 ("Services"). The Commission seeks comment on whether these are the appropriate FERC accounts and what adjustment factor should be applied to eliminate non-conduit investment that may be included in Accounts 367 and 369. NPRM ¶¶ 41-42.

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<sup>8/</sup>See Implementation of Section 703 of the Telecommunications Act of 1996. FCC 97-173, Memorandum Opinion and Order (May 22, 1997) (hereinafter "May 22, 1997 Order, FCC 97-173").

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The Commission's proposed computation is not practicable or meaningful in at least three respects. First, UE is not capable of readily computing its conduit investment on per linear meter or footage basis. While UE does have the conduit and ducts recorded on the property records by the linear foot, these conduits and ducts are fully or over depreciated. Therefore, using Net Plant or even Gross Plant to calculate a cost for the conduit and ducts would not be appropriate.

Second, UE believes that such a computation on a system-wide basis is meaningless because of the large variations of conduit capital costs based on how heavily urbanized or populated an area is where the conduit system is located, for example, costs may range from \$30.00 per linear foot to over \$250.00 per linear foot in urban areas where conduit is most likely to be needed.

Third, reliance on the FERC accounts identified by the Commission for the capital investment of conduit systems would not approximate the true-present day costs of UE's conduit system because of the age of most of its conduit. The data in these accounts is far too old and inaccurate to be used as the basis for determining conduit rates. Assuming that the Commission rejects a market-based system, the only realistic alternatives from UE's perspective is to use a forward-looking or replacement cost methodology. Such costs could be based on engineering cost studies for designated areas that could serve as the basis for conduit rates in the area.

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3. Carrying Charges

The Commission's proposed methodology for conduits includes components for administrative and maintenance costs analogous to the formula for electric pole attachments, as well as a rate of return component.

With respect to calculating the carrying charge for conduit maintenance costs, the Commission proposes to include only FERC Account 594 ("Maintenance of underground lines (Major only)"). In addition to Account 594, allocable portions of the following FERC accounts would be necessarily included in calculating the maintenance component of the carrying charge:

- \* Account 594.1 ("Maintenance of lines (Non-major only)"): This account includes non-major maintenance activities of underground conduit and related equipment such as repairing ladders, sewers, drains, walls, etc.
- \* Account 590 ("Maintenance supervision and engineering (Major only)"): This account includes the cost of labor and expenses incurred in the general supervision and direction of maintenance of the distribution system. These expenses are directly attributable to maintaining the conduit system and therefore should be included in calculating the maintenance carrying charge for conduit.

UE believes that portions of the above expense categories are attributable to maintaining its underground conduit systems. There are several options by which to allocate such costs: (1) separate sub accounts that certain utilities may maintain; (2) cost studies which the EEI/UTC comments suggest as one possibility; or (3) a percentage estimate based on evaluation and judgment of the type of activities and their costs.

Finally, UE believes that the Commission's conduit rate methodology should

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expressly allow utilities to include both conduit investment costs and expenses in the rate calculation based on appropriate cost studies or other appropriate analytical justification. Such an approach would allow individual utilities to include significant costs that may be unique to them.

### **III. PROPOSED POLE ATTACHMENT RATES**

The Commission has adopted a formulaic historic cost recovery methodology to determine the maximum allowable rate for pole attachments under Section 224(d) of the Act as follows:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Net Cost of a Bare Pole}}{\text{Charge Rate}} \times \text{Carrying}$$

NPRM ¶ 8. In the NPRM, the Commission has requested comments on potential adjustments to the various factors in this formula.

At the outset, UE believes that the Commission's formulaic approach is inappropriate and inaccurate. The Commission should allow market-based rates for pole attachments or, at a minimum, adopt a rate methodology that uses forward-looking costs or replacement cost estimates. UE already has a cost-sharing agreement for pole attachments negotiated with various local exchange telephone companies which reflect market-based rates in UE's service area. These agreements are based on each company being responsible for a proportionate share of the present day costs of owning and maintaining physical pole plant. The Commission's rate methodology should allow UE to negotiate similar market-based